

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2405 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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BALUBHAI RATANJI

Versus

STATE OF GUJARAT

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Appearance:

Kum. V.P.Shah, Advocate, for the Petitioners.

Shri A.G.Uraizee, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/12/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No.1 herein) on 13th February 1995 under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act for brief) is

under challenge in this petition under Article 226 of the Constitution of India. Thereby the order passed by the Competent Authority at Surat (respondent No.2 herein) on 5th April 1990 under Section 8 (4) thereof came to be set aside. By his aforesaid order, respondent No.2 ordered closure of the proceeding with respect to the declaration filed by and on behalf of the petitioners on 20th September 1989 pursuant to one Government Resolution of 12th August 1988. Incidentally, the petitioners have also questioned the legality and validity of the aforesaid Government Resolution of 12th August 1988.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing survey No.33/1 admeasuring 14215 square metres situated at Palanpur within the urban agglomeration of Surat (the disputed land for convenience). It appears that it was in occupation and possession of the petitioners. They did not file any declaration in the prescribed form under Section 6 (1) of the Ceiling Act on the ground that it was used for agricultural purposes. It appears that, later on, in one plan prepared by the Surat Urban Development Authority (the SUDA for convenience) under the relevant provisions contained in the Gujarat Town Planning and Urban Development Act, 1976 (the TP Act for brief), the disputed land was shown in non-agricultural zone. Thereupon, the petitioners were called upon to file the necessary declaration in the prescribed form under Section 6 (1) of the Ceiling Act. The necessary declaration was filed showing the disputed land to be belonging to the joint family of the petitioners. It was duly processed by respondent No.2. After observing the necessary formalities under Section 8 of the Ceiling Act, by his order passed on 6th April 1990 under Sub-Section (4) thereof, respondent No.2 found the holding of the petitioners to be within the ceiling limit keeping in view the members in the family and ordered closure of the proceeding. Its copy is at Annexure-F to this petition. It appears to have come to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision was therefore contemplated. A show cause notice thereupon came to be issued to the petitioners on 1st July 1991 calling upon them to show cause why the order at Annexure-F to this petition should not be set aside. It appears that no reply came to be filed by or on behalf of the petitioners nor did they remain present at the time of hearing despite grant of adjournments for the purpose. Thereupon, by the order passed by and on behalf of respondent No.1 on 13th February 1995 under Section 34 of

the ceiling Act, the order at Annexure-F to this petition came to be set aside and the holding of the petitioners was declared to be surplus by 8265 square metres. Its copy is at Annexure-G to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-G to this petition. Since the petitioners were called upon to file their declaration in the prescribed form in view of the Government Resolution of 12th August 1988, the petitioners have by amendment challenged its legality and validity in this petition. Its copy is at Annexure-E to this petition.

3. Learned Advocate Kum. Shah for the petitioners is right in her submission to the effect that agricultural lands would fall outside the purview of the Ceiling Act in view of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 Supreme Court at page 2465. It appears that in the declaration filed by and on behalf of the petitioners under Section 6 (1) of the Ceiling Act, the disputed land was shown to be agricultural land. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, the applicability of the aforesaid ruling of the Supreme Court would depend upon investigation into certain factual position. It would be necessary to ascertain or to find out whether or not any master plan answering its definition contained in Section 2 (h) of the Ceiling Act was in existence prior to coming into force of the Ceiling Act and what was the situation of the disputed land in such master plan if it was found to be in existence and whether or not the disputed land was, in fact, used for agricultural purposes on the date of coming into force of the Act. Answers to all these questions would obviously decide whether or not the aforesaid binding ruling of the Supreme Court is applicable in the instant case. It is better that this exercise is performed by respondent No.2.

4. Learned Advocate Kum. Shah for the petitioners is justified in voicing her grievance against non-reliance on the Maintenance Surveyor's report on the part of respondent No.1 as transpiring from the impugned order at Annexure-G to this petition for the purpose of allowing certain deductions in the area of the disputed land in occupation and possession of the petitioners. This court had an occasion to deal with reliability of the Maintenance Surveyor's report in its unreported ruling in Special Civil Application No.3054 of 1995

decided on 27th August 1996. It has been held therein that the Maintenance Surveyor's report should be relied on and, if it is not found reliable on cogent and convincing reasoning, an opportunity should be given to the landholder to produce some other reliable material on record in support of its case for deduction of the area on account of passage of road from the disputed land. The author of the impugned order at Annexure-G to this petition has done nothing of the kind. He has simply not relied on the Maintenance Surveyor's report without any rhyme or reason. That is not permissible in law in view of the aforesaid unreported ruling of this court. This aspect may be taken into consideration by respondent No.2 only if it is found that the Ceiling Act is applicable to the disputed land.

5. In view of my aforesaid discussion, I am of the opinion that the matter deserves to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. The law applicable with respect to exemption of agricultural lands from the operation of the Ceiling Act at the time of the decision to be made by respondent No.2 shall have to be kept in mind. The impugned orders at Annexures-F and G to this petition will have therefore to be quashed and set aside for the purpose.

6. It is clarified that the challenge to the Government Resolution at Annexure-F to this petition is not pressed at this stage and that question is kept open.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 6th April 1990 under Section 8 (4) of the Ceiling Act at Annexure-F to this petition as also the order passed by and on behalf of the State Government on 13th February 1995 under Section 34 of the Ceiling Act at Annexure-G to this petition are quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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